

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

EDWIN BANKS,

Plaintiff,

v.

**SECRETARY, DEPARTMENT OF
HEALTH AND HUMAN SERVICES,**

Defendant.

**CIVIL ACTION NO.
5:20-cv-00565-LCB**

MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL EVIDENCE

Defendant, the Secretary of the Department of Health and Human Services, files this motion seeking leave to submit supplemental evidence pertaining to his Response in Opposition to Plaintiff's Motion for Discovery (Doc. 69) filed October 18, 2021. In support of this motion, the Secretary states as follows:

1. In the Secretary's response, he included an argument that Plaintiff Banks's discovery request is overly broad and unduly burdensome. Plaintiff's Motion for Discovery (Doc. 69) at 18–21.

2. As evidence supporting that argument, the Secretary included information regarding the specific number of administrative decisions that Banks's request for discovery would necessitate the Secretary producing. *Id.* at 18.

3. In footnote 9, the Secretary stated the following:

The undersigned counsel, despite working in conjunction with counsel for Medicare, was not able to determine the number of beneficiary Part C QIC/IRE decisions for the requested time period by the date of this filing. Publicly available reports issued by the Part C IRE show that for 2020, the IRE issued 90,821 partially favorable and unfavorable decisions; 23,704 partially favorable and unfavorable decisions for 2021 Quarter 1; and 27,971 partially favorable and unfavorable decisions for 2021 Quarter 2. Exhibit 5 at 5 (2020), 115 (2021 Q1), 124 (2021 Q2). These reports are available at <https://www.medicareappeal.com/Researchers-Data>. The Secretary will supplement this information as it becomes available.

Id. at 18 n.9.

4. The same day of this filing, counsel for the Department of Health and Human Services (HHS) received a letter from Maximus Federal Services (hereinafter, “Maximus Letter”) with the subject line “Part C QIC IRE Data September 2019-September 2021.” A true and correct copy of the Maximus Letter is attached to this notice as Doc. 71-1. That letter states the precise number of beneficiary Part C QIC/IRE decisions for the time period that Plaintiff requests.

5. Specifically, the Maximus Letter states, “We have gathered this data and can report that we have 189,099 appeals that meet the[relevant] criteria within the time span requested.”¹ Doc. 71-1 at 1.

6. Accordingly, the total number of administrative decisions contemplated by Banks’s discovery requests can be updated as follows:

- 5,115 ALJ decisions (Declaration of McArthur Allen (Doc. 69-5) ¶¶ 4–5);

¹ The relevant criteria include the information requested by Banks, which consists of all beneficiary appeals between September 2019 and September 2021 “that were not fully favorable to the appellant and were not dismissed on procedural grounds.” Maximus Letter (Doc. 71-1) at 1.

- 36,385 QIC decisions (QIC Letter and Data Summary (Doc. 69-6) at 2); and
- 189,099 Part C IRE decisions (Maximus Letter (Doc. 71-1) at 1).

7. Like the ALJ decisions and the QIC decisions, all Part C IRE decisions would have to be downloaded individually, as bulk extractions are not possible. Maximus Letter (Doc. 71-1) at 1.

8. Thus, Banks is requesting that the Secretary produce a total of 230,599 administrative decisions, all of which would have to be manually downloaded individually—an endeavor which would take hundreds, if not thousands, of hours of work. *Id.*; Allen Decl. (Doc. 69-5) ¶¶ 11,15.

9. The Secretary submits that the information set forth above provides additional support for his argument that the substantial burden that the production of these documents would place on HHS far outweighs any benefit Banks would receive from the requested documents. And, critically, Banks would receive *no* benefit from the requested documents because they do not support his argument for standing. *See generally* Response (Doc. 69).

WHEREFORE, PREMISES CONSIDERED, the Secretary respectfully requests that this Court grant this motion and consider the information contained herein in supplementation and support of the arguments set forth in his Response in Opposition to Plaintiff's Motion for Discovery.

Date: October 19, 2021

Respectfully submitted,

PRIM F. ESCALONA
UNITED STATES ATTORNEY

s/ John D. Saxon, Jr.

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